

REDACTED -- Public Version, filed 5/15/06

TAB C

REDACTED -- Public Version, filed 5/15/06

CHART INDICATING CORRESPONDENCE OF CRYOVAC JURY INSTRUCTIONS TO PECHINEY INSTRUCTIONS¹

Plaintiff Instr. #	COV PRELIMINARY Instruction Title	Defendant Instr. #	Pechiney <u>PRELIMINARY</u> Instruction Title
A.	INTRODUCTION		
B.	PATENT LAW		The Patent System, Generally How a Patent is Obtained
C.	GLOSSARY OF PATENT TERMS		GLOSSARY OF PATENT TERMS
D.	PATENT CLAIMS -- GENERALLY		The Parts of a Patent
E.	DUTIES AS JURORS		Duty of Jury
F.	EVIDENCE		Evidence
G.	WITNESSES - CONFLICTS IN TESTIMONY		
H.	EXPERT WITNESSES		
I.	DIRECT AND CIRCUMSTANTIAL EVIDENCE		
J.	BURDENS OF PROOF		Burden of Proof
K.	NATURE OF THE CASE		The Nature of the Case
L.	UNCONTESTED FACTS		
M.	GENERAL INSTRUCTIONS		Conduct of the Jury
N.	CONDUCT OF THE JURY		Conduct of the Jury
O.	INSTRUCTIONS ON TAKING NOTES		Conduct of the Jury
P.	LOGISTICAL INFORMATION [AGREED]		AGREED
Q.	COURSE OF THE TRIAL [AGREED]		AGREED
			Video and Glossary

¹ Blank spaces in the chart indicate lack of instruction corresponding to particular Cryovac or Pechiney instruction.

REDACTED -- Public Version, filed 5/15/06

FINAL JURY INSTRUCTIONS:

Plaintiff Instr. #	CRYOVAC <u>FINAL</u> Instruction Title	Defendant Instr. #	Pechiney <u>FINAL</u> Instruction Title
1.	GENERAL INSTRUCTIONS		
1.1	INTRODUCTION & JURORS' DUTIES [AGREED]		[AGREED]
1.2	DUTIES AS JURORS	1.	General Introduction
1.3	EVIDENCE DEFINED [AGREED]		[AGREED]
1.4	DIRECT AND CIRCUMSTANTIAL EVIDENCE [AGREED]		[AGREED]
1.5	CONSIDERATION OF EVIDENCE [AGREED]		[AGREED]
1.6	STATEMENTS OF COUNSEL [AGREED]		[AGREED]
1.7	CREDIBILITY OF WITNESSES [AGREED]		[AGREED]
1.8	EXPERT TESTIMONY [AGREED]		[AGREED]
1.9	NUMBER OF WITNESSES [AGREED]		[AGREED]
1.10	BURDENS OF PROOF	10.	Burdens of Proof
		9.	The Parties and Their Contentions
		9.1	The Nature of the Case
		9.2	Cryovac's Contentions
		9.3	Pechiney's Contentions
		9.4	Summary of Issues
	Closest is Cryovac Preliminary Instruction B.	11.	The Patent System
2.	PATENT INSTRUCTIONS -- WILLFUL INFRINGEMENT		
2.1	WILLFUL INFRINGEMENT	14.	Willful Infringement

REDACTED -- Public Version, filed 5/15/06

2.2	WILLFUL INFRINGEMENT -- TIMING OF ADVICE	14.4	Closest is Advice of Counsel
2.3	WILLFUL INFRINGEMENT -- COMPETENCY OF ADVICE	14.4	Closest is Advice of Counsel
2.4	WILLFUL INFRINGEMENT -- GOOD FAITH RELIANCE	14.4	Closest is Advice of Counsel
		14.1	Knowledge of the Patent
		14.2	Licenses
		14.2.1	Accused Infringer's Patents
		14.3	Notice of Infringement
		14.5	Copying or Designing Around a Patent
3.3.1	<i>TORTIOUS INTERFERENCE WITH CONTRACT - GENERAL</i>	16	Tortious Interference with a Contract Relationship - Generally
3.2	ELEMENTS OF LIABILITY	16.1	Elements of Liability
3.3	EXISTENCE OF CONTRACT	16.2; 16.3	Requirement of a contract; Use of Extrinsic Evidence to Construe
3.3.1	INTENT TO ENTER INTO A CONTRACT		
3.3.2	TEST FOR REQUIREMENTS CONTRACT		
3.3.3	COURSE OF DEALING	16.4	Definitions of Types of Extrinsic Evidence
3.3.4	COURSE OF PERFORMANCE	16.4	Definitions of Types of Extrinsic Evidence
3.3.5	TRADE USAGES IN INDUSTRY	16.4	Definitions of Types of Extrinsic Evidence
N/A		16.5	Rules for Applying Extrinsic Evidence
3.3.6	CAUTIONARY INSTRUCTION	N/A	
3.4	KNOWLEDGE	16.6	Requirement of Knowledge
3.5	INTENTIONAL CONDUCT THAT CAUSED BREACH		
3.5.1	INTENT	16.7	Requirement of Intent

REDACTED -- Public Version, filed 5/15/06

3.5.2	INTENT – UNLAWFUL ACTS		16.8	Requirement of Malice
3.5.3	CAUSATION OF BREACH		16.11	Requirement that Breach be Proximately Caused by Defendant's conduct
			16.12	Breach Defined
			16.13	Breach Required
3.5.4	PROXIMATE CAUSE OF INJURY		16.14	Proximate Cause
3.6	LACK OF JUSTIFICATION		16.9	Proper or Improper Interference Defined
			16.10	Pechiney's Motive
3.7	INJURY		17	Damages for Tortious Interference with Contract
4.4.1	TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS – GENERALLY		18	Tortious Interference with Prospective Contract Relations
4.2	ELEMENTS OF LIABILITY		18.1	Elements of Liability
4.3	EXISTENCE OF BUSINESS RELATIONSHIP OR EXPECTANCY		18.2	Expectancy Requirement
4.4	KNOWLEDGE		18.3	Knowledge Requirement
4.5	INTENTIONAL CONDUCT WHICH CAUSED BREACH			
4.5.1	INTENT		18.4	Intentional Interference
N/A			18.5	Requirement of Malice
4.5.2	INTENT – UNLAWFUL ACTS			
N/A			18.6	Proper or Improper Interference Defined
N/A			18.7	Pechiney's Motive
4.5.3	CAUSATION OF BREACH		18.8	Causation Requirement
4.5.4.	PROXIMATE CAUSE OF INJURY		18.10	Damage to Plaintiff Proximately Resulting from Conduct

REDACTED -- Public Version, filed 5/15/06

4.6	COMPETITIVE PRIVILEGE	18.9	Competition as Proper or Improper Interference
5.	PATENT INSTRUCTIONS - VALIDITY		
5.1	VALIDITY	13.	Invalidity—in General
5.2	PRESUMPTION OF VALIDITY		
5.3	THE WRITTEN DESCRIPTION REQUIREMENT	13.1	Written Description
5.4	ENABLEMENT	13.2	Enablement
5.5	NO UNDUE EXPERIMENTATION		
5.6	ANTICIPATION - GENERALLY	13.3 13.4	Closest are: The Prior Art Anticipation/Lack of Novelty
5.7	CLAIM CONSTRUCTION	12. 12.1 12.2 12.3	The Claim of the Patent in Suit Construction of the Claim Limitations of the Claim at Issue & [Alternative 12.2.1]] "Comprising"
5.8	PRIOR ART -- DATE OF INVENTION	13.3.1	Prior Art—Date of Invention
5.9	REDUCTION TO PRACTICE -- DATE OF INVENTION		
5.10	PRIOR ART -- BURDEN	13.3	The Prior Art
5.11	PRIOR PUBLIC KNOWLEDGE OR USE	13.3.2	Prior Art—Prior Public Use or Knowledge
5.12	PRIOR INVENTION	13.3.5	Prior Art—Prior Invention
5.13	PRIOR PUBLICATION	13.3.3	Prior Art—Prior Printed Publication
N/A		13.3.4	Prior Art—Prior Patents
5.14	ANTICIPATION REQUIRES AN ENABLING DISCLOSURE		
5.15	OBVIOUSNESS	13.5 13.5.6	Obviousness Determination of Obviousness
5.16	SCOPE AND CONTENT OF THE PRIOR ART	13.5.1	The Scope and Content of the Prior Art

REDACTED -- Public Version, filed 5/15/06

5.17	DIFFERENCES OVER THE PRIOR ART [AGREED]		[AGREED]
5.18	LEVEL OF ORDINARY SKILL	13.5.3	Level of Ordinary Skill
5.19	MOTIVATION TO COMBINE & EXPECTATION OF SUCCESS		
5.20	OBVIOUSNESS - HINDSIGHT		
5.21	OBJECTIVE CRITERIA CONCERNING OBVIOUSNESS	13.5.4	Objective Indications Concerning Obviousness
N/A		13.5.5	Independent Invention by Others
5.22	OBVIOUS TO TRY		
6.	PATENT DAMAGES		
6.1	PATENT DAMAGES – GENERAL	15	Damages for Patent Infringement - General
6.2	COMPENSATORY PATENT DAMAGES IN GENERAL	15.1	Compensatory Patent Damages
N/A		15.2	Date Damages Begin and End
6.3		15.3	Burden of Proof
6.4		15.4	Two Types of Patent Damages
6.5		15.6	Lost Profits Generally
6.6	PATENT LOST PROFITS – CRYOVAC'S COMPETING PRODUCT		
N/A		15.7.2	Manufacturing and Marketing Ability
6.7	PATENT LOST PROFITS – PANDUIT APPROACH	15.7, 15.7.1, 15.7.3, 15.8	Lost Profits Due to Lost Sales Demand Absence of Acceptable Non-Infringing Amount of Lost Profits Substitutes
6.8	PATENT LOST PROFITS – MARKET SHARE APPROACH		
6.9	PATENT LOST PROFITS – ACCELERATED ENTRY/HEAD START		

REDACTED -- Public Version, filed 5/15/06

6.10	FUTURE PATENT PROFITS – DETERMINATION			
7.	DAMAGES FOR BUSINESS TORT CLAIMS			
7.7.1	DAMAGES FOR BUSINESS TORT CLAIMS – GENERALLY			
7.2	DAMAGES – IMPOSSIBILITY OF PRECISE CALCULATION NO BAR TO RECOVERY			
		19.1	Compensatory Damages	
7.3	RECOVERABLE ELEMENTS OF DAMAGE	17.1	Recoverable Elements for Interference with Contract	
		19.	Damage for Tortious Interference with Prospective Contractual Relations	
7.4	MITIGATION/LOST VOLUME SELLER	17.2	Duty to Mitigate Damages	
8.	DELIBERATION AND VERDICT	20.	Deliberations and Verdict	
		20.1	Duty to Deliberate	
N/A		20.2	Court Has No Opinion	
		15.5	Entire Market Value Rule	
N/A		15.9	Reasonable Royalty	
N/A		15.9.1	What is a Reasonable Royalty	
6.12		15.9.2	Factors for Determining a Reasonable Royalty	
		15.10	Total Patent Infringement Damages	
6.13	PATENT DAMAGES INTEREST	15.11	Closing Statement – Patent Infringement Damages	

REDACTED -- Public Version, filed 5/15/06

CERTIFICATE OF SERVICE

I, Michele Sherretta, hereby certify that on May 10, 2006, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such document is available for viewing and downloading to the following counsel of record:

N. Richard Powers, Esquire
Connolly Bove Lodge & Hutz LLP
The Nemours Building
1007 North Orange Street
P. O. Box 2207
Wilmington, DE 19899

I further certify that I caused a copy of the foregoing document to be served by hand delivery on the above-listed counsel of record and on the following non-registered participant in the manner indicated below:

BY FEDERAL EXPRESS

Steven R. Trybus, Esquire
Jenner & Block LLP
One IBM Plaza
Chicago, IL 60611-7603

YOUNG CONAWAY STARGATT & TAYLOR, LLP



John W. Shaw (No. 3362)
jshaw@ycst.com
Michele Sherretta (No. 4651)
msherretta@ycst.com
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
(302) 571-6600

Attorneys for Plaintiff Cryovac, Inc.